

Second Defendant
Sir Frederick Barclay
First
22 February 2012

Claim No: HC11C03437

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

B E T W E E N :-

PATRICK MCKILLEN

Claimant

-and-

- (1) SIR DAVID ROWAT BARCLAY
(2) SIR FREDERICK HUGH BARCLAY
(3) MISLAND (CYPRUS) INVESTMENTS LIMITED
(4) ELLERMAN CORPORATION LIMITED
(5) B OVERSEAS LIMITED
(6) MAYBOURNE FINANCE LIMITED
(7) THE TRUSTEES OF THE SIR DAVID AND SIR FREDERICK BARCLAY
FAMILY SETTLEMENTS
(8) RICHARD FABER
(9) MICHAEL SEAL
(10) RIGEL MOWATT

Defendants

WITNESS STATEMENT OF
SIR FREDERICK HUGH BARCLAY

I, **SIR FREDERICK HUGH BARCLAY**, of Le Montaigne, 7 Avenue de Grande Bretagne, Monte-Carlo, MC 98000 Monaco, **WILL SAY AS FOLLOWS:**

1. I am the Second Defendant in these proceedings.
2. The content of this witness statement is derived from my own knowledge, save where otherwise stated, and is true. Where I have relied on other sources for the content of this statement, I identify where my knowledge is derived from, and it is true to the best of my knowledge, information and belief.
3. I am now into my late seventies. As I explain below, I am effectively retired. I keep no work diary, have no business secretary and received or reviewed little or no documentation relating to the matters in issue in these proceedings (given the limits of my involvement and the fact that I do not use email or text

messages). My memory is not what it once was (and, in any event, I have never been very good at details or dates).

4. I have seen and read carefully the draft statement of Richard Faber in these proceedings. Richard was heavily involved in the Coroin deal at almost all times. He describes the details of what happened, including my limited involvement and the involvement of my brother. I confirm that what Mr Faber has to say is correct in all respects so far as I am aware, but particularly in relation to what he says about me and my involvement.
5. Given the above, I will not deal with the allegations against me in the detail that I would have liked to have done if I were better able. In what follows, I will first make some general points about myself and my brother and our position and involvement in the matters before the Court. I then respond to the allegations against us in general terms. I will then address two particular allegations about conversations Mr McKillen had with me.
6. I am a (mostly retired) businessman. My family interests own amongst other things, the Daily Telegraph newspaper and the Ritz Hotel in London. We have had long experience in the hotel business. We have owned over 30 hotels over the years. Apart from the Ritz, we currently own the Cavendish Hotel in Mayfair.
7. My brother and I, in recent years have devoted increasing amounts of our time to our extensive charitable interests. Our charity work has been recognised in, amongst other things, the knighthoods bestowed on us by Her Majesty the Queen in 2000.
8. My brother has been seriously ill for some time with angina. In September last year he had two stents implanted. He has not recovered well and, for example, remains unable to concentrate, attend meetings or read long documents. He has been unable to prepare a witness statement in the proceedings and I believe a letter from his consultant will be produced to the Court in confidence. To an extent therefore, in what follows, I speak for both of us. I know I speak for him in expressing the sentiments I do about the

nature of the claim being made against us.

9. Our business is large, but is a family business. It was built up by me and my brother, but it is now run by my nephew (Sir David's son) Aidan Barclay, who is the Chairman and Chief Executive, assisted by his brother Howard, one of the other directors of the group. Some other members of the family are also involved in the business. My brother and I retain a strong interest in the affairs of the business and regularly discuss matters with Aidan and Howard and other advisers, including Richard Faber.
10. This interest is at a high level. We are not involved day-to-day, or in the minutiae of the business. We do not see or review legal/transactional documentation (and never did, if we could help it, employing lawyers to do so). However, given our position and responsibilities, we have very many legal papers to sign, including in relation to the business of non-UK holding companies within the group. I generally sign such documentation on the basis that I would not have been asked to sign unless it was appropriate and I do so in reliance on trusted advisers who have produced the documents.
11. To take a specific example as to signing, I know that we had an agreement with Derek Quinlan to buy his shares in Coroin, and that this was conditional on dealing with pre-emption and the charges over those shares. I was involved in (and remember) no particular details of this, beyond the price. I have been shown that I signed a letter agreement dated 17 February 2011 between Ellerman Hotels Group Limited (a BVI company) and Mr Quinlan, which was for the purchase of his shares, subject to various matters. I cannot now recall this and expect that I signed it because I was asked to as a director of that particular company, without reading it in detail, if at all. I take responsibility for having signed it, of course, but that is the reality of the position and I am not sure that, even if I had read it, I would have understood the significance of all that was in it, without the benefit of an explanation from a lawyer.
12. Otherwise, I knew of the broad nature of the transactions involved in relation to Coroin. It was a complex process, involving a number of stages and

transactions which often arose in light of other issues and the constant threat from third parties, who would no doubt like to purchase Coroin or its assets and debts. I assume that the companies must have taken legal advice about all of these transactions, but I did not see any such advice. Such questions are no longer for me (if they ever were: I am no lawyer).

13. However, it certainly was my belief that we would not have been doing any transactions or acting in any way that was unlawful or illegal. We take advice and we follow it and we do not do what we have been told is not lawful. We have never done business like that and there would have been no reason to have started doing so now. It would also be a stupid way to do business. There is no point in trying to buy a business (especially one like Coroin) if the methods you do it by are going to be unwound because you have not done it in a manner that is lawful and effective. Indeed, if Mr McKillen is suggesting that I (or any member of my family or those working for us) intended to do anything unlawful, or to breach any contract, the suggestion is not only insulting, it is also absurd. I am sure my brother would say the same, if he were able to give evidence.
14. For a number of reasons, I was involved in some aspects of the Coroin transaction. First, these are assets we have always been very interested in. They are well known hotels, in prime locations, making good money, and without any management company in place. I do not know how many times over the years we have looked over Claridge's, for example, but it is a great many. The last time, I think, was when Coroin bought the business in 2004. For the three hotels to be potentially available made it of interest to us. I accept that we wanted to take over Coroin (if we could).
15. Secondly, even by the standards of the family business, this is a big deal. Naturally, we would be more involved. Furthermore, Aidan fell ill last year. This gave us an additional reason to be involved and, as a consequence, my brother, in particular, was more involved than he would usually have been.
16. Thirdly, there is what I would describe as the "offshore" and personal aspect. My brother and I left the UK more than twenty years ago to take up residence

in Monaco. Many of the people we deal with are based offshore, e.g. the Malaysian interests whom we met in Monaco. This ties in with the question of personal relationships. My brother and I have an ambassadorial role for the business and we have built up a substantial body of contacts over the years, including the sort of people who might be interested in assets such as the Coroin hotels. For example, we have known Mr Quinlan for some time. As a result, we might take an initial meeting, or we might negotiate the broad terms of a particular deal, but it would be left to be carried into effect by others.

17. I should state firmly and clearly that I never intended that any of the companies should do anything unlawful or illegal, still less which breached any contracts or rights of Mr McKillen. Moreover, neither my brother nor I ever intended to injure Mr McKillen or ignore his rights. On the contrary, I believe we have respected his rights and bent over backwards to try to accommodate him. Mr Faber sets out the details, but at one point we even offered him a 40% holding in the company, i.e. more than he presently has.
18. My brother and I deeply resent the suggestion that we have been party to an unlawful conspiracy. At all times, we have conducted ourselves honestly and believed that what the business was doing was lawful and would not have gone along with or let it happen otherwise. We object strongly to the way in which Mr McKillen seeks to tarnish our hard-earned reputations.
19. I quite accept we have tried to secure control of Coroin. Nobody is denying or concealing this. Mr McKillen is trying to stop us: that is his right. Similarly, it is our right to use whatever lawful means are available to us to take control of Coroin, in a free-market and highly competitive environment. As I understand it, the essential question for the Court is: have we managed to do what we have done lawfully? If we, by which I mean our interests and those advising us, have got it wrong, that was not on purpose, and not at anybody's instigation.
20. Finally, I am sure that two important points will not escape the notice of the Court. First, Coroin is heavily over-indebted and was in a perilous position, without long-term backing from its lender. Our interests have worked hard to

solve that, while Mr McKillen has done little or nothing about it. (Indeed, my understanding is that he largely caused the over-indebtedness with his elaborate refurbishment of the Connaught.) Secondly, our belief is that Mr McKillen is, and has for some time been, in severe financial difficulty. As Mr Faber explains, this fact has exacerbated the problems of refinancing the company. If Mr McKillen were to be diluted by a share issue as a result, that is his fault and not ours. In my view, his lack of funds should not mean that the company is forced to sell one of its prime and irreplaceable assets, just so Mr McKillen can maintain his level of shareholding.

Conversations with Mr McKillen

21. I understand Mr McKillen alleges that, prior to 2011, I had expressed an interest to him in acquiring his shares and said that my intention was that Coroin would become solely owned by us.
22. There was never any such conversation with Mr McKillen. I have only spoken to him twice. Once, in person, in 2010. The other time was in a brief phone conversation shortly after we bought Misland. For different reasons, I distinctly remember the substance of both conversations.
23. I met Mr McKillen at the Ritz, in the autumn of 2010. The meeting was organised by Joe Robertson (my defence incorrectly says Robinson), at the instigation of Mr McKillen. Mr Robertson is somebody I occasionally bump into in Monaco. Mr Robertson set up the meeting after taking my number over a coffee in the Cafe de Paris.
24. When I arrange to meet someone at the Ritz, I usually try to meet them at the entrance. I was at the door to meet Mr McKillen at the allotted time. He came up, shook my hand and introduced himself (which was necessary, since I did not know what he looked like). He was not wearing a jacket and tie (and his shirt was hanging out). The Ritz has a jacket and tie only policy for men. I made a joke about it being fortunate that I was there to meet him, because otherwise he would not have got past security. Mr McKillen took umbrage and the encounter turned distinctly frosty. I showed him briefly round the

ground floor and the new extension into William Kent House. I think the whole thing lasted only 10 or 15 minutes. Given the atmosphere, I did not invite him to have a coffee afterwards (as I normally would have done).

25. We did not discuss Coroin, or our interest in acquiring Mr McKillen's shares. Certainly I believe I would not have told him that it was our intention to purchase **all** the shares in Coroin, which I understand he alleges. In autumn 2010, our plans were much too undeveloped at that stage and I am confident that we never made any suggestion to Mr McKillen of buying his shares until we floated an offer via Mr Quinlan in mid-January 2011.
26. My only other conversation with Mr McKillen was, I believe, shortly after the Misland purchase. I have been told what Mr McKillen says about this. That is not how the conversation went at all. Again, I remember it distinctly, for reasons which will become obvious.
27. Mr McKillen called me out of the blue on my mobile. The conversation was very short. After saying who he was, he began with a barrage of what I can only describe as foul-mouthed abuse about Mr Quinlan, calling him a fat so-and-so and using a stream of four-letter words about him. It was very unpleasant and threatening (particularly given that I already knew that Mr Quinlan had been subjected to threats by Mr McKillen after Mr Quinlan had refused to sign for exclusivity with the Qataris). I do not like or tolerate swearing. I was not going to listen to Mr McKillen's rantings and I cut off the call. There was no discussion about Coroin, still less a conversation of the sort that Mr McKillen has simply invented.
28. Mr McKillen's call seemed to me to be consistent with his behaviour generally. There were the threats to Derek Quinlan, which Mr Faber refers to, and this unpleasant phone call. It was one of the factors, I learned from Mr Buchanan after we had done the Misland deal, which caused the Green family to sell out, i.e. Mr McKillen's unpleasant behaviour in general (and in particular towards Mr Quinlan), which made the board of Coroin not only dysfunctional, but also unpleasant to be on.

Support to Mr and Mrs Quinlan

29. I have been shown the document described as "Response to the Claimant's Request For Further Information Dated 2 February". I confirm that, so far as I am aware, it is true, although I have not been privy to all the details, which have been handled by my brother. However, I should emphasise the personal sense of gratitude to Mr Quinlan that I will always feel as a result of his generosity in relation to the school for children with special needs which my granddaughter attends. Helping the Quinlan family in their time of need was something that I will never regret and I would not hesitate to do it again if necessary, regardless of anything to do with Coroin, which is irrelevant to how I feel on this issue.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed:

Date: